IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

WEDNESDAY, THE 25TH JULY 2007 / 3RD SRAVANA 1929

WP(C).No. 22743 of 2007(G)

LAR.29/2004 of SUB COURT, HOSDRUG

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PETITIONER:

MAMUNI KUNHIRAMAN, AGED 57 YEARS,
S/O. KUNHAMBU, RESIDING AT MUNDAKANDAM,
CHERUVATHUR VILLAGE, P.O. CHERUVATHUR,
HOSDURG TALUK, KASARAGOD DISTRICT.

BY ADV. SRI.A.DINESH RAO

RESPONDENTS:

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1. THE SPECIAL TAHSILDAR (LA),
RAILWAYS, KASARAGOD (R.O).

2. THE DEPUTY CHIEF ENGINEER,
RAILWAYS, KANNUR.

BY SC SHRI. ALEXANDER THOMAS

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 25/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.KRISHNAN, J.

WP(C)No. 22743 OF 2007 G

Dated this the 25th July, 2007.

JUDGMENT

This writ petition is filed to set aside Exts.P4 and P7 orders. This is a Land Acquisition Reference made under Section 18 of the Land Acquisition Act. On 6.12.2006 as the claimant and his counsel did not appear and therefore the land acquisition court answered the reference against the claimant. It is a settled position of law that the land acquisition court is not competent to reject the claim of the claimant for default. It is expected to consider the case on merits with the materials available and decide whether the award passed by the authority is proper or not. It requires application of mind. Just because the claimant is absent, it cannot straightaway answer the reference against the claimant. So, the order Ext.P4 suffers from serious infirmity and therefore it requires interference and it is set aside. At the same time, it has to be noted that for the fault of the claimant he must not be rewarded with interest. Therefore, it is a matter which can be considered by the court below while disposing of the land acquisition reference that is to the effect whether the claimant is entitled to claim interest from the date of answering of the reference against him till this day

(25.7.2007) and pass the award accordingly after affording the State, Railways and the claimant an opportunity to adduce evidence in support of their respective contentions and pass the award in accordance with law. In the light of the above, quashing of Ext.P7 is not necessary as the basic order itself is set aside. Writ petition is disposed of accordingly.

M.N.KRISHNAN
Judge

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